

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:)	
)	
JOHN THOMISON)	DIVISION OF WATER
)	POLLUTION CONTROL
)	
RESPONDENT)	CASE NUMBER WPC07-0162
)	

DIRECTOR’S ORDER AND ASSESSMENT

NOW COMES Paul E. Davis, director of the Tennessee Division of Water Pollution Control, and states:

PARTIES

I.

Paul E. Davis is the duly appointed director of the Division of Water Pollution Control by the commissioner of the Tennessee Department of Environment and Conservation (hereinafter the “division” and the “department” respectively).

II.

John Thomison (hereinafter the “Respondent”) is a resident of the state of Tennessee and is the owner of property located adjacent to Nine Mile Ridge Road in Hickman County (hereinafter the “site”). Service of process may be made on the Respondent at 204 Hillwood Boulevard, Nashville, Tennessee 37205.

JURISDICTION

III.

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) § 69-3-101 *et seq.*, the Water Quality Control Act (the “Act”), has occurred,

or is about to occur, the commissioner may issue a complaint to the violator and the commissioner may order corrective action be taken pursuant to T.C.A. § 69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. § 69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. § 69-3-116 of the Act. Department Rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. § 69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (the “Rule”). Pursuant to T.C.A. § 69-3-107(13), the commissioner may delegate to the director any of the powers, duties, and responsibilities of the commissioner under the Act.

IV.

The Respondent is a “person” as defined by T.C.A. § 69-3-103(20) and as herein described, has violated the Act.

V.

Tennessee Code Annotated § 69-3-108 requires a person to obtain coverage under a permit from the department prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substance will move into waters of the state. Coverage under the general permit for Storm Water Discharges Associated with Construction Activity (TNCGP) may be obtained by submittal of a Notice of Intent (NOI), a site specific Storm Water Pollution Prevention Plan (SWPPP) and appropriate fee.

VI.

Pursuant to T.C.A. § 69-3-108, Rule 1200-4-7-.04 requires a person to submit an application prior to engaging in any activity that requires an Aquatic Resource Alteration Permit (ARAP) that is not governed by a general permit or a § 401 Water Quality Certification.

No activity may be authorized unless any lost resource value associated with the proposed impact is offset by mitigation sufficient to result in no overall net loss of resource value.

VII.

The unnamed tributary to the Willie Branch, described herein, is “waters of the state” as defined by T.C.A. § 69-3-103(33). Pursuant to T.C.A. § 69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, *Use Classifications for Surface Waters*, is contained in the *Rules of Tennessee Department of Environment and Conservation Division of Water Pollution Control Amendments*. Accordingly, these waters of the state are classified for the following uses: fish and aquatic life, recreation, irrigation, livestock watering and wildlife.

FACTS

VIII.

On June 7, 2007, division personnel from the Columbia Environmental Field Office (CL-EFO) conducted a complaint investigation at the site and noted that a dam had been constructed across an unnamed tributary to Willie Creek downstream of a spring-box. An area approximately two acres in size downstream of the spring-box had been excavated. The excavated material had then been used to build a dam across the tributary and an outfall pipe had been placed at the bottom of the dam. Erosion Prevention and Sediment Control (EPSC) measures upstream of the dam were inadequate and had allowed sediment to migrate into the unnamed tributary downstream of the excavated area. Division personnel noted sediment deposits up to 6 inches in depth in the unnamed tributary for a distance of approximately one half mile downstream of the dam. Division personnel contacted the Respondent and explained the violations noted. The Respondent was instructed to immediately stabilize the site in order to

prevent additional sediment from entering waters of the state and to not cap the opening of the outfall pipe in order to continue to provide flow downstream of the dam.

IX.

On June 8, 2007, the division issued a Notice of Violation (NOV) to the Respondent for the violations observed during the June 7, 2007, site investigation, in which the Respondent was instructed to immediately stabilize the site.

X.

On July 26, 2007, division personnel returned to the site to determine compliance with the NOV requirements. Division personnel noted that the majority of the site had been stabilized but some of the excavated area was still bare and eroded material was continuing to migrate into the unnamed tributary. The outfall pipe at the base of the dam had not been capped, allowing free flow of water downstream.

XI.

On November 15, 2007, division personnel returned to the site to determine compliance with the NOV requirements. Division personnel noted that the banks of the pond as well as the areas around the pond had been stabilized. The outfall pipe at the base of the dam had not been capped, allowing free flow of water downstream.

VIOLATIONS

XII.

By conducting land disturbance activities without coverage under the TNCGP and by altering waters of the state without authorization under an ARAP, the Respondent has violated T.C.A. §§ 69-3-108(a)–(b), 114(b), which state in part:

§ 69-3-108(a):

Every person who is or is planning to carry on any of the activities outlined in subsection (b), other than a person who discharges into a publicly owned treatment works or who is a domestic discharger into a privately owned treatment works, or who is regulated under a general permit as described in subsection (j), shall file an application for a permit with the commissioner or, when necessary, for modification of such person's existing permit.

§ 69-3-108(b):

It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any Waters of the State;
- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;
- (6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters;

§ 69-3-114(b):

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in § 69-3-108; or to refuse to furnish, or to falsify any records, information, plans,

specifications, or other data required by the board or the Commissioner under this part.

XIII.

By causing a condition of pollution in the unnamed tributary to the Willie Branch, the Respondent has violated T.C.A. § 69-3-114(a) which states:

It shall be unlawful for any person to discharge any substance into the waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in § 69-3-103(22), unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.

ORDER AND ASSESSMENT

XIV.

WHEREFORE, pursuant to the authority vested by T.C.A. §§ 69-3-109, 69-3-115 and 69-3-116, I, Paul E. Davis, hereby issue the following ORDER AND ASSESSMENT to the Respondent.

1. The Respondent shall, within 60 days of receipt of this ORDER, submit to the division a corrective action plan (CAP) to remove the accumulated sediment from the affected areas downstream of the dam and impoundment, de-water the impoundment, dismantle the dam, and restore the affected areas of the stream downstream and upstream of the dam and impoundment to its original condition. The CAP shall be prepared by a licensed professional engineer, landscape architect, or other competent professional and shall detail the proposed manual methods to be used to remove the accumulated sediment from the affected areas downstream of the dam and impoundment prior to de-watering, and the

proposed manual methods to remove the accumulated sediment from within the de-watered impoundment prior to dismantling the dam. The CAP shall detail the proposed method to be used to de-water the impoundment in a manner that will not result in further violations of the Act. The Respondent shall submit the CAP to Water Pollution Control Manager in the CL-EFO for review and approval. The Respondent must correct any deficiencies the division finds upon review of the CAP and the corrected CAP should be resubmitted to the division within 30 days of notification of the deficiencies.

2. The Respondent shall, within 30 days of receipt of written approval, initiate the approved actions. The written approval of the CAP by the division will constitute authorization for sediment removal from the affected areas downstream of the dam and impoundment, as well as authorization for restoration of the affected areas of the watershed upstream of the dam and impoundment and no additional ARAP coverage is required. The Respondent shall submit written notification to the division that work has begun at the time of initiation of the approved actions. The Respondent shall submit the written notification to the CL-EFO at the address shown in item 1, above.
3. The Respondent shall, within 180 days of initiating the approved CAP, but not later than June 30, 2008, complete the CAP and submit written notification of completion to the division. The Respondent shall submit the written notification to the CL-EFO at the address shown in item 1, above.
4. The Respondent shall pay a CIVIL PENALTY of TWENTY THOUSAND DOLLARS (\$20,000.00) to the division, hereby ASSESSED to be paid as follows:

- a. The Respondent shall, within 30 days of entry of this ORDER, pay a CIVIL PENALTY in the amount of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00).
- b. If the Respondent fails to comply with Part XIV, item 1 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of FIVE THOUSAND FIVE HUNDRED DOLLARS (\$5,500.00), payable within 30 days of default.
- c. If the Respondent fails to comply with Part XIV, item 2 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of FIVE THOUSAND FIVE HUNDRED DOLLARS (\$5,500.00), payable within 30 days of default.
- d. If the Respondent fails to comply with Part XIV, item 3 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of SIX THOUSAND FIVE HUNDRED DOLLARS (\$6,500.00), payable within 30 days of default.

The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The director may, for good cause shown, extend the compliance dates contained within this ORDER. In order to be eligible for this time extension, the Respondent shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension by the division will be in writing. Should the Respondent fail to meet the requirement by the extended date, any associated Civil Penalty shall become due 30 days thereafter.

Further, the Respondent is advised that the foregoing ORDER is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations.

However, compliance with the ORDER will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.

Issued by the director of the Division of Water Pollution Control on behalf of the Commissioner of the Tennessee Department of Environment and Conservation on this 6th day of December 2007.



Paul E. Davis, P.E.
Director, Division of Water Pollution Control

NOTICE OF RIGHTS

Tennessee Code Annotated §§ 69-3-109, 115, allow any Respondent named herein to secure review of this Order and Assessment. In order to secure review of this Order and Assessment, the Respondent must file with the Department's Office of General Counsel a written petition setting forth each of the Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within thirty (30) days of receiving this Order and Assessment. The petition should be sent to: "Appeal of Enforcement Order, TDEC-OGC, 20th Floor L & C Tower, 401 Church Street, Nashville, TN 37243-1548".

If the required written petition is not filed within thirty (30) days of receipt of this ORDER AND ASSESSMENT, the ORDER AND ASSESSMENT shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the ORDER AND ASSESSMENT will not be subject to review pursuant to T.C.A. §§ 69-3-109 and 69-3-115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act.) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Payment of the civil penalty shall be made to "Treasurer, State of Tennessee" and shall be sent to the Division of Fiscal Services, Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14th Floor L & C Annex, 401 Church Street, Nashville, TN 37243. The case number, shown on the first page of this Order and Assessment, should be included on or with the payment. All other correspondence shall be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, 6th Floor L & C Annex, 401 Church Street, Nashville, TN 37243.